

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

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ROBERT F. BYRNE
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W.D. OF TN, MEMPHIS

THOMAS P. LEWIS,

Plaintiff,

v.

No. 02-2958 B

UNITED STATES OF AMERICA,

Defendant.

ORDER DENYING AS MOOT MOTIONS OF THIRD-PARTY DEFENDANT
EDMONDS AND PLAINTIFF LEWIS FOR PARTIAL SUMMARY JUDGMENT

This lawsuit was initiated by the Plaintiff, Thomas P. Lewis, on December 13, 2002 against the United States of America (the "USA"), pursuant to the Internal Revenue Code, seeking recovery of \$2,711.16 plus interest paid to the USA for employment tax liabilities and penalties assessed against him. The USA denied liability and, on February 6, 2003, filed a counterclaim against Lewis for trust fund penalty assessments in the amount of \$4,211,466.27, plus penalties, interest and statutory additions. On or about February 12, 2002, the Internal Revenue Service assessed against Ronald L. Edmonds trust fund recovery penalties related to employment taxes owed by VisionAmerica, Inc. and, on February 11, 2003, the USA filed a third-party complaint against Edmonds to reduce those penalty assessments to judgment. Edmonds moved for partial summary judgment pursuant to Rule 56(b) of the Federal Rules of Civil Procedure on August 31, 2004 as to Counts I and II of the third-party complaint. The motion was joined in by the Plaintiff on October 1, 2004. The two motions for partial summary judgment are currently before the Court.

Rule 56(b) provides in pertinent part that "[a] party against whom a claim, counterclaim, or

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cross-claim is asserted . . . may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof." Fed. R. Civ. P. 56(b). In their motions, Edmonds and Lewis aver that summary judgment is appropriate as to Counts I and II based on the USA's concession that the tax assessments for the fourth quarter of 1998 and the first quarter of 1999 have been satisfied. In response to the motions, the USA has advised the Court as follows:

As Edmonds correctly points out, the United States states in its complaint and in its Fed. R. Civ. P. 26(a)(1) disclosures that the assessed tax liabilities for 4th quarter 1998 and the 1st quarter 1999 were paid. . . . The certified tax transcript for Edmonds attached to the summary judgment memorandum reflects that these payments were credited against the original tax assessment. That is why \$4.2 million is the outstanding balance on Edmonds' account instead of the original \$5.8 million assessed. . . . The tax liabilities had to be assessed before they could be abated.

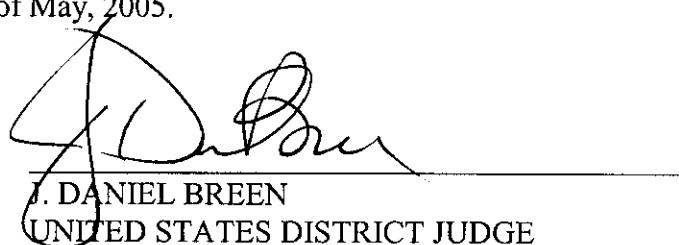
Consistent with the abatement, the United States' prayer for relief seeks \$4.2 million, plus statutory additions from the date of assessment, in damages. As the Edmonds tax transcript confirms, the damages sought by the United States are the outstanding tax liability that remains after the payments were credited. Edmonds' contention -- that the United States is attempting to collect on liabilities previously paid -- is wrong and is contrary to the relief sought in the complaints' prayers for relief.

Indeed, Edmonds is seeking relief from something that was never asserted.

...

(United States' Opp'n to Edmonds' and Lewis' Mots. for Partial Summ. J. at 1-2.) Thus, as it appears to the Court that the relief sought by the Plaintiff and the Third-Party Defendant is not necessary, the motions are DENIED as moot.

IT IS SO ORDERED this 12th day of May, 2005.



J. DANIEL BREEN
UNITED STATES DISTRICT JUDGE



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